Attorney Docket No. 2003P01019WOUS

UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	Martin Oberhomburg
Application Number:	10/573,433
Filing Date:	03/24/2006
Group Art Unit:	3742
Examiner:	Mark H. Paschall
Title:	COOKING AREA, PARTICULARLY A GAS COOKING AREA

Mail Stop Appeal Brief - Patents

Commissioner for Patents

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APPEAL BRIEF

Pursuant to 37 CFR 1.192, Appellant hereby files an appeal brief in the above-identified application. This appeal brief is being filed within one month of the Notice of Panel Decision from Pre-Appeal Brief Review dated September 28, 2010. The requisite fee set forth in 37 CFR 1.17(f) was paid on July 1, 2010.

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(1) REAL PARTY IN INTEREST

The real party in interest is BSH Bosch und Siemens Hausgeräte GmbH of Munich, Germany.

(2) RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) STATUS OF CLAIMS

Claims 1 – 10 are cancelled. Claims 11-25 are pending in the present application and have been finally rejected. The final rejections of claims 11-25 are being appealed. Claims 11 and 21 are independent.

(4) STATUS OF AMENDMENTS

No Amendments are outstanding. The April 30, 2010 Office Action was responsive to an Amendment that was entered on March 15, 2010. Appellant filed a Notice of Appeal on July 1, 2010.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

A description of the subject matter recited in the pending claims that are argued separately is set forth below, along with an indication of the portions of the specification and drawings that provide support for these features.

11. A cooking area comprising at least one heating element (1; page 3, lines 19-20; Figure 1), a power controller (31; page 4, lines 13-15; Figure 1) for setting a heating output of the heating element (1) which operates according to the set heating output in at least one of a first operating mode (I; page 5, lines 1-3; Figure 2) and a second operating mode (II; page 5, lines 1-4), and an indicating device (35; page 5, line 7; Figure 1) which indicates the set

heating output in the first operating mode (I) with symbols from a first set of symbols (e.g., “0” to “9”; page 5, line 6), wherein the indicating device (35) indicates the set heating output in the second operating mode (II) with symbols from a second set of symbols (e.g., one or more of the transverse segments of a seven segment display; page 5, lines 14-20; Figure 2) of a different type of symbolism compared to the first set of symbols.

12. The cooking area according to claim 11, wherein the indicating device consists of a seven-segment display (35).

13. The cooking area according to claim 11, wherein the first set of symbols comprises a series of numbers from "0" to "9" (page 5, line 6) and the second set of symbols does not include numbers (41, 43, 45; Figure 2; page 5, line 10).

14. The cooking area according to claim 12, wherein the second set of symbols comprises one or more of three transverse segments (41, 43, 45) of the seven-segment display (35; page 5, lines 9-12).

21. An appliance comprising at least one operating element (1; page 3, lines 19-20; Figure 1), a controller (31, page 4, lines 13-15; Figure 1) for setting output of the operating element (1) which operates according to the set output in at least one of a first operating mode (I) and a second operating mode (II), and an indicating device (35) which indicates the set output in the first operating mode (I) with symbols from a first set of symbols (e.g., “0” to “9”), wherein the indicating device (35) indicates the set output in the second operating mode (II) with symbols from a second set of symbols (e.g., transverse segments of a seven digit display) of a different type of symbolism compared to the first set of symbols in a manner that visually distinguishes the first operating mode from the second operating mode (see Figure 2).

22. The cooking area according to claim 21, wherein the indicating device consists of a seven-segment display (35) to alternatively display the first or second sets of symbols.

23. The cooking area according to claim 21, wherein the first set of symbols comprises a series of numbers from "0" to "9" (page 5, line 6) and the second set of symbols does not include numbers (page 5, line 10).

24. The cooking area according to claim 22, wherein the second set of symbols comprises one or more of three transverse segments (41, 43, 45) of the seven-segment display (35).

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A) Whether claims 11, 15 and 16 are unpatentable under 35 U.S.C. § 102(3) over U.S. Patent No. 6,967,314 (Sauter et al.)

B) Whether claims 11, 15, 16, 21, 23 and 25 are unpatentable under 35 U.S.C. § 103(a) over Sauter et al. in view of U.S. Patent No. 6,255,630 (Barnes et al.) or U.S. Patent No. 4,650,970 (Ohouchi)

C) Whether claims 12-14, 17-20, 22 and 24 are unpatentable under 35 U.S.C. §103(a) over Sauter et al. (or Sauter et al. in view of Barnes et al. or Ohouchi) in view of U.S. Patent Publication No. 2005/0000958 (Stockley)

(7) ARGUMENT

A) Claims 11, 15 and 16 are patentable under 35 U.S.C. § 102(e) over U.S. Patent No. 6,967,314 (Sauter et al.)

Claim 11

Claim 11 is directed to a cooking area comprising at least one heating element, a power controller for setting a heating output of the heating element which operates according to the set heating output in at least one of a first operating mode and a second operating mode, and an indicating device which indicates the set heating output in the first operating mode with symbols from the first set of symbols. The indicating device indicates the set heating output in the second operating mode with symbols from a second set of symbols of a different type of symbolism compared to the first set of symbols.

The claimed arrangement eliminates any confusion as to whether the heating element is operating in the first mode or the second mode (see page 2, lines 23-27). In particular, the second mode is sometimes falsely interpreted by the user as fault in the operation of the heating element. Thus, using symbols of different types of symbolism avoids this confusion, by visually distinguishing the two different types of heating modes.

The central issue regarding claim 11 is whether Sauter et al. teaches a heating element which operates in first and second modes, and an indicating device which indicates the power output in the first and second modes using first and second sets of symbols of different types of symbolism. For example, the first set of symbols includes the numbers 0 to 9 and the second set of symbols does not include numbers (claim 13), such as one or more of the three horizontal display elements on a seven-segment display (claim 14). Although the rejection under 35 U.S.C. §102(e) based on Sauter et al. was initially applied in the April 28, 2009 Office Action, and traversed in Applicant's June 16 response, the Examiner's September 4, 2009 Office Action does not address Applicant's argumentation. In particular, page 5 of the September 4 Office Action stated that Applicant's argumentation with respect to claims 11-20 have been considered but are moot in view of the new grounds of rejection. Of course, the

grounds of rejection for claim 11 under 35 U.S.C. §102(e) have been maintained throughout all of the Office Actions, yet the Examiner has yet to provide any response. In particular, in the Response to Arguments section of the Final Rejection, the Examiner provides absolutely no response to Applicant's arguments regarding the §102(e) rejection. While the response to arguments indicates that Sauter et al. as modified teach the broadly claimed display system for an oven, there is no response as to why Sauter et al. anticipates claim 11.

Reconsideration and withdrawal of the rejection under 35 U.S.C. §102(e) is respectfully requested.

B) Claims 11, 15, 16, 21, 23 and 25 are patentable under 35 U.S.C. § 103(a) over Sauter et al. in view of Barnes et al. or Ohouchi

Claim 11

Independent claim 11 was alternatively rejected under 35 U.S.C. §103(a) over Sauter et al., in view of either Barnes et al. or Ohouchi.

Within the context of the Section 103(a) rejection, the Examiner takes the position that "for instance a number 4 on a display is a different symbol from a number 7 on the display". See page 3 of the Final Rejection. Applicant respectfully traverses this position given that the numbers 4 and 7 belong to the same set of symbols and they are not of different symbolism, as claimed. Examiner Paschall thankfully seemed to acknowledge that it was a stretch to interpret the numbers 4 and 7 of being of different symbolism during a telephonic interview conducted on November 18, 2009. And to even more specifically emphasize this point, claim 11 was amended to specify that the second set of symbols is of a different type of symbolism compared to the first set of symbols. In Sauter et al., the operator is unable to (visually) distinguish between the faulty operation, e.g., when power is off during the first mode, and a non-faulty operation, e.g., when the power is off during the clocked operating mode in which the heating element is turned on and off during normal operation.

Ohouchi and Barnes et al. show various types of displays but neither teach the use of two different types of symbols for displaying the same parameter, i.e., heating output, per claim 11. For example, as discussed during the November 18, 2009 interview, Ohouchi teaches a bar graph 12 to display oven temperature, whereas display 11 is for displaying time. As such, Ohouchi does not show the use of two sets of symbols used to indicating heating output in first and second operating modes as set forth in claim 11. Further, Barnes et al. shows multiple displays for displaying power level, mode and temperature. See Figure 2.

The Response to Argument section of the Final Rejection attempts to address Applicant's arguments in regard to the §103 rejection. In particular, on page 5, the Examiner points out that Barnes et al. and Ohouchi teach various types of displays, but they do not relate to the same parameter. For example, the Examiner indicates that time display is a different type of symbolism than temperature display. While this may be true, it clearly shows that the Examiner does not understand that the claims set for the use of two different types of symbols for displaying the same parameter, i.e., heating output in the case of claim 11. The Examiner goes on to further state that Barnes et al. teaches a total of four displays per column 3, the first display being time data, the second display being temperature data, the third display defining mode, and a fourth display depicting lighted bars. Of course, these are not directed toward the same parameter as set forth in claim 11.

Claim 23

Claim 23 specifies that the first set of symbols comprises a series of numbers and the second set of symbols does not include numbers.

In the Final Rejection (page 4, last sentence), the Examiner states that "As per claim 3 [13] use of numerical symbols as set forth in Sauter et al. and if modified as set forth above it is inherent that use of numerical display numbers is obvious for the artisan." The Examiner was requested to clarify this statement but has failed to do so. In any event, the Examiner's statement that "the claim are silent as to just what a different type of symbol is." is clearly incorrect as claim 23 very clearly specifies what the symbols include (numbers for the first set

of symbols (for a first heating mode) and no numbers for the second set of symbols (for a second heating mode)).

Claim 21

Independent claim 21 is directed to an appliance that includes at least one operating element, a controller for setting output of the operating element which operates according to the set output in at least one of a first operating mode and a second operating mode. Claim 21 further specifies an indicating device which indicates the set output in the first operating mode with symbols from a first set of symbols, wherein the indicating device indicates the set output in the second operating mode with symbols from a second set of symbols of a different type of symbolism compared to the first set of symbols in a manner that visually distinguishes the first operating mode from the second operating mode.

Accordingly, for reasons similar to that noted above, the applied prior art, in particular, Sauter et al., or Sauter et al. in view of Barnes et al./Ohouchi, does not teach an indicating device which indicates set output in the first and second operating modes using symbols of different types of symbolism in a manner that visually distinguishes the first operating from the second operating mode. Again, all of the examples referred to in the Final Rejection are directed toward different parameters, e.g., time and temperature, etc.

Appellant respectfully requests withdrawal of this rejection.

C) Claims 12-14, 17-20, 22 and 24 are patentable over 35 U.S.C. §103(a) over Sauter et al. (or Sauter et al. in view of Barnes et al. or Ohouchi) in view of U.S. Patent Publication No. 2005/0000958 (Stockley)

Claim 12

Claim 12 sets forth that the indicating device consists of a seven-segment display – for indicating the heat output in the first and second modes. None of the applied art, teaches that a single seven-segment display indicates heat output in the first and second modes. Stockley et al. clearly teaches multiple seven-segment displays not "consisting of a seven segment display" as claimed, and also does not teach that its seven segment displays indicate first and

second heating modes. The Examiner does not provide any response to Applicant's traversal in this regard.

Claim 22

Similar arguments to claim 12 apply to claim 22. In addition, claim 22 recites a seven-segment display to alternatively display the first and second set of symbols. This, claim language is not specifically addressed in the Final Rejection.

Claims 13 and 23

Claims 13 and 23 specify that the first set of symbols comprises a series of numbers and the second set of symbols does not include numbers.

In the Final Rejection (page 4, last sentence), the Examiner states that "As per claim 3 [13] use of numerical symbols as set forth in Sauter et al. and if modified as set forth above it is inherent that use of numerical display numbers is obvious for the artisan." The Examiner was requested to clarify this statement but has failed to do so. In any event, the Examiner's statement that "the claim are silent as to just what a different type of symbol is." is clearly incorrect as claim 13 very clearly specifies what the symbols include (numbers for the first set of symbols (for a first heating mode) and no numbers for the second set of symbols (for a second heating mode)).

Claims 14 and 24

Claims 14 and 24 specify that the second set of symbols comprise one or more of three transverse segments of the seven-segment display. Claims 14 and 24 depend from claims 12 and 22, respectively, which recited that the indicating devices consist of a seven-segment display.

In the Final Rejection, the Examiner sets forth that Barnes et al. defines transverse segments (bar graphs). However, this is the first time that the Examiner has provided this interpretation. In any event, claim 14 specifies that the transverse segments are of the seven-segment display. Thus, the bar graphs of Barnes et al. do not qualify as a seven-segment display as set forth in claim 14.

(8) CONCLUSION

In view of the foregoing discussion, Appellant respectfully requests reversal of the Examiner's rejection.

Respectfully submitted,

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CLAIMS APPENDIX

Claims 1-10. Canceled.

11. (Rejected) A cooking area comprising at least one heating element, a power controller for setting a heating output of the heating element which operates according to the set heating output in at least one of a first operating mode and a second operating mode, and an indicating device which indicates the set heating output in the first operating mode with symbols from a first set of symbols, wherein the indicating device indicates the set heating output in the second operating mode with symbols from a second set of symbols of a different type of symbolism compared to the first set of symbols.

12. (Rejected) The cooking area according to claim 11, wherein the indicating device consists of a seven-segment display.

13. (Rejected) The cooking area according to claim 11, wherein the first set of symbols comprises a series of numbers from "0" to "9" and the second set of symbols does not include numbers.

14. (Rejected) The cooking area according to claim 12, wherein the second set of symbols comprises one or more of three transverse segments of the seven-segment display.

15. (Rejected) The cooking area according to claim 11, wherein the heating outputs associated with the first operating mode are grouped in a group of high heating outputs and the heating outputs associated with the second operating mode are grouped in a group of low heating outputs.

16. (Rejected) The cooking area according to claim 11, wherein the first operating mode is a continuous operating mode in which power is supplied continuously to the heating element.

17. (Rejected) The cooking area according to claim 11, wherein the second operating mode is a clocked operating mode in which power is supplied discontinuously to the heating element.

18. (Rejected) The cooking area according to claim 11, wherein the heating element is a gas burner which is supplied with gas via a gas pipe.

19. (Rejected) The cooking area according to claim 17, wherein the clocked operating mode is activated at heating outputs below a minimum heating output at which the heating element is still operating with a minimal continuous supply of gas in the continuous operating mode.

20. (Rejected) The cooking area according to claim 17, wherein the display device displays the symbols for indicating power stages in which the heating element is operating in the clocked mode as flashing.

21. (Rejected) An appliance comprising at least one operating element, a controller for setting output of the operating element which operates according to the set output in at least one of a first operating mode and a second operating mode, and an indicating device which indicates the set output in the first operating mode with symbols from a first set of symbols, wherein the indicating device indicates the set output in the second operating mode with symbols from a second set of symbols of a different type of symbolism compared

to the first set of symbols in a manner that visually distinguishes the first operating mode from the second operating mode.

22. (Rejected) The cooking area according to claim 21, wherein the indicating device consists of a seven-segment display to alternatively display the first or second sets of symbols.

23. (Rejected) The cooking area according to claim 21, wherein the first set of symbols comprises a series of numbers from "0" to "9" and the second set of symbols does not include numbers.

24. (Rejected) The cooking area according to claim 22, wherein the second set of symbols comprises one or more of three transverse segments of the seven-segment display.

25. (Rejected) The cooking area according to claim 11, wherein the set heating output in the first and second operating modes relates to heating power.

EVIDENCE APPENDIX

None

RELATED APPEALS APPENDIX

None